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EXAMINER

HARBECK, TIMOTHY M

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/820,574

**Applicant(s)**

MALTZMAN, REED

**Examiner**

Timothy M. Harbeck

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/28/01, 10/01/01, 3/12/02,</u> | 6) <input type="checkbox"/> Other: ____  |

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "20" has been used to designate both a search server and a buyers request (pg 13 of specification). The examiner recognizes that the reference on page 13 of the specification was most likely intended to read "block 200," and has continued examination under this assumption. Correction of this error is recommended nonetheless.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 513.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 10-15 do not recite technology in the body of the claim. The method of conducting an auction, from placing the item up for sale to selecting a successful buyer and so forth does not require technology to perform. The subject matter must claim the use of technology to be eligible for consideration.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (US Pat. No. 6,202,051 B1) in view of Hof et al (Hof hereinafter, eBay vs. Amazon.com, May 31, 1999, Business Week, pg 128).

**Re Claim 1:** Woolston discloses a method for facilitating Internet commerce through internetworked auctions comprising presenting, via a first computer system (Column 5, lines 1-4) an auction purchase process of an offering to a buyer (Column 5 line 53- Column 7 line 5). Woolston does not disclose a method for presenting a fixed price purchase process or the method where the fixed price purchase process presentation is removed in response to a bid from a buyer in the auction purchase

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process. Hof discloses that eBay, a popular Internet auction server at the time of invention, had considered adding fixed prices to their auctions. It would have been obvious to someone skilled in the ordinary art at the time of invention to include the fixed price purchase process of Hof to the auction purchase process of Woolston, so that the risk for both the sellers and buyers in the auction process can be limited. The risk of a seller placing an item up for auction is that he or she will not receive a fair value for the product if only one bid is received. The risk of a buyer is that another bidder may drive up the price of said product above the fair value. The fixed price purchase option would help alleviate this risk by allowing the buyer and seller to agree on a reasonable price before the auction truly commences (introduction of additional bidders). The buyer and seller are therefore assured of a fair transaction, as opposed to the potential risks associated with the auction. It also would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a

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specified price is the optimal system so that the buyer has the option to minimize his risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item.

**Re Claim 2:** Woolston further discloses a method wherein the presenting includes generating a first user interface identifying the auction purchase to the buyer (Column 6, line 26-28). Woolston does not disclose generating an interface identifying the fixed price process to the buyer, however this would have been obvious in light of the previous rejection to Claim 1 above so that the initial buyer could be presented with both options and can make a decision based upon the amount of risk he or she is willing to take on.

**Re Claim 3:** Woolston further discloses a method wherein the first user interface is a markup language document generated at a second computer system (Column 2, line 52-59), and wherein the presenting includes communicating the markup language document from the second computer system to the first computer system (Column 3, lines 18-27).

**Re Claim 4:** Woolston in view of Hof has established, in the rejection of claim 1 above, that the fixed price purchase option is only valid if a bid has not been placed on an item. Once a bid is place the option to buy said item at a fixed price is no longer available and therefore it would have been obvious to remove this option from the first user interface as discussed above in Claim 3 and to generate a second user interface that only identifies the auction purchase process to the buyer so that said buyer cannot

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purchase the item outright without going through the auction process with other potential users

**Re Claim 5:** Woolston in view of Hof discloses the claimed method except for wherein the auction purchase process is presented with an initial bid value and wherein the fixed price purchase option is presented with a pre auction seller determined price. However it would have been obvious to someone skilled in the ordinary art at the time of invention to include these values in the presentation of the user interface to provide potential buyers with pricing information. The initial bid value is the lowest possible price that a seller is willing to part with the item (commonly referred to as a reserve price; Column 4 lines 30-31), and therefore lets the potential buyers know that any lower bid is moot. The use of a reserve price is a common practice in auctions that has been used prior to the date of invention. The fixed price purchase method has been established with regards to Claim 1 above, and therefore it would have been obvious to present this price to the potential buyer so that he can purchase the item at the specified price before the auction commences. If this were not presented to the potential buyer, he or she would have no way to determine the fixed price. It is also obvious for the seller to determine this fixed price because they have the most intimate knowledge of the item since they currently own it and are therefore in the best position to establish a fair market value.

**Re Claim 6:** Woolston in view of Hof above has established the fixed price purchase option for the initial buyer/bidder. Woolston further discloses a method

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wherein an electronic transaction is established between a buyer and a seller (Column 5 lines 10-19).

**Re Claim 7:** Woolston in view of Hof discloses the claimed method supra and further discloses a method wherein, responsive to the receipt of the bid from the buyer, as part of the auction process, maintaining only the auction purchase process to receive further bids from further buyers (Column 6, lines 26-49). Woolston does not disclose that the auction lasts for a predetermined amount of time, however this has been common for online auctions such as eBay, Amazon and OnSale for years before the time of invention.

**Re Claim 8:** Woolston in view of Hof discloses the claimed method supra and Woolston further discloses establishing the electronic transaction between a winning buyer who submitted a highest valid bid and the seller (Column 5, lines 10-19).

**Re Claim 9:** Woolston further discloses presenting to a seller a purchase process option to sell the offering by both the auction and the fixed price purchase process and receiving a purchase process indication from the seller responsive to the presentation of the purchase process option (Column 4, lines 25-30).

**Re Claim 10:** Woolston discloses a method wherein selling information from a seller is received including an offering description (Column 6, lines 11-14), and receiving purchasing information including a desired bid the buyer will buy the offering (Column 6, lines 27-32, lines 47-49).



Woolston further discloses a method comprising determining a successful buyer when if multiple buyers submit bidding information and the highest possible bids, the buyer with the highest bid is the successful buyer (Column 6, lines 32-34). Finally

Woolston further discloses determining a successful bid price to be paid by the successful buyer comprising if multiple buyers bid, the bid equals the highest bid (Column 6, lines 32-34).

Woolston does not disclose indicating whether to allow a buyer a chance to buy the offering at a pre auction seller determined price, and if the indication to allow the buyer the chance to buy the offering at the pre auction seller determined price, nor does he disclose receiving purchasing information from the buyer including an affirmative indication to purchase the offering at the pre auction seller determined price.

Woolston also does not disclose determining a successful buyer comprising if an affirmative indication to purchase the offering at the pre auction seller determined price is received from the buyer and no bids have been accepted for the offering, the buyer, having given affirmative indication, is the successful buyer.

Finally Woolston does not disclose determining a successful bid price to be paid by the successful buyer comprising if the affirmative indication to purchase the offering at the pre auction seller determined price is received from the buyer, the successful bid price is the pre auction seller determined price. Hof, as noted in claim 1, discloses that eBay, a popular online auction service had considered fixed prices. Using the same rationale as in Claim 1, it would have been obvious to include the fixed prices taught by Hof to the auction system of Woolston. It follows then that the process for receiving an

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offering's seller information indicating whether to allow a buyer the chance to buy the offering at a pre auction determined price, along with the bid reserve price to give the initial buyer the opportunity to use the fixed price function. If there were no way to indicate to the buyer that this fixed price exists, there would be no way to exercise this option.

Next, in the same way that purchase information is received that includes a desired bid from the buyer, the system would be capable of receiving purchase information after an affirmative indication to purchase the offering at the pre auction seller determined price. The successful buyer could also be determined from this affirmative indication, because only the first bidder is eligible for this option (See Claim 1). If there is an affirmative response to the fixed price offer, the successful buyer is the party who responded to the offer. Finally the determination of the successful bid price with regards to the fixed price purchase option is simply identifying the seller's previously determined fixed price, if the buyer elects the fixed price purchase option.

**Re Claim 11:** Woolston in view of Hof discloses the claimed method supra, but does not disclose requesting additional information from the buyer used to determine whether to accept the bid. The bid in this case is the request to purchase the offering at the offerings pre auction seller determined price. This process of soliciting bidder information after the auction, however, has been used for years prior to the date of applicant's invention. This is done for a variety of reasons, including ensuring that the potential buyer has enough funds to support the transaction, the buyer has some form of collateral to put against the auctioned item, or to see if the buyer has defaulted on

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any previous transactions. In this way the seller and the auction enterprise can be protected from either fraudulent bids or from completing a transaction with a buyer who simply cannot afford the item.

**Re Claim 12:** Woolston in view of Hof discloses the claimed method supra. As stated previously with regards to Claim 1, it would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a specified price is the optimal system so that the buyer has the option to minimize his risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item.

**Re Claim 13:** Notifying the offering seller of an error if the reserve price is not equal to or less than the pre auction seller determined price would be inherent in this process. The reserve price is the lowest bid the seller is willing to accept for the item for sale. If the fixed purchase price were less than the reserve price there would be no

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reason an interested party would bid on the product because they would purchase the item outright at the lower price. The presence of a lower fixed purchase price would eliminate the auction option altogether.

**Re Claim 14:** This again would be inherent. A bid in an auction is essentially a promise to purchase the item at the offered price. It would be obvious then that this same bidder would purchase the item at a lower price. The benefit to the seller in notifying the buyer of the fixed purchase price is that he or she could quickly execute the transaction without having to go through the auction process, while receiving a price that he or she had previously established as acceptable.

**Re Claim 15:** If a first bidder places a bid that is less than the fixed purchase price, it would be obvious to notify the bidder of his option to purchase the item outright. The bidder may not be aware that the item has the fixed price option and may be willing to pay more to ensure that he wins the item without having to take on the risk associated with the bidding process. Since the option is only available to the first bidder, it is necessary to double check with the bidder before making the fixed purchase price void for the item. The seller would benefit in that he or she would receive the fair price that he or she had previously established as acceptable.

**Re Claim 16:** Woolston further discloses presenting a part of the offering's selling information to a buyer on a computer screen (Column 6, lines 26-39).

**Re Claim 23:** The machine readable medium of Claim 23 recites similar limitations to Claim 10 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 10.

**Re Claim 25:** The machine readable medium of Claim 25 recites similar limitations to Claim 12 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 12.

**Re Claim 26:** The machine readable medium of Claim 26 recites similar limitations to Claim 16 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 16.

Claims 17-19 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Hof as applied to claim 16 and 23 above, and further in view of eBay ([http://web.archive.org/web/\\*/http://www.ebay.com](http://web.archive.org/web/*/http://www.ebay.com), Date: 11/27/99, Category: Toys, Bean Bag Plush: Action Figures: General)

**Re Claim 17:** Woolston in view of Hof discloses the claimed method supra except for the explicit disclosure of displaying a visual indicator in association with the offerings selling information. However the use of visual indicators has been used by online auction servers such as eBay prior to the date of applicant's invention. The examiner has provided a screen shot of an eBay auction from 1999 that uses visual icons and colors to indicate things such as a picture of the item or whether the item is a new listing. It would have been obvious to someone skilled in the ordinary art at the time of invention to include the visual indicators used by eBay to the auction process of Woolston in view of Hof, so that potential buyer can easily see if the option to purchase the item using the fixed price option is available. Without this visual indicator, said

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potential buyer may place a bid, thus voiding the fixed purchase price option, when he may have wanted to exercise said fixed purchase price option.

**Re Claim 18:** Woolston in view of Hof and further in view of the Wayback Machine discloses the claimed method supra but does not disclose removing the visual indicator after a first bid is accepted for that offering from a first buyer. However this would be obvious since it has been established in previous claims that once a bid has been placed on an item, the ability to exercise the fixed purchase price is eliminated. The presence of the visual indicator is so that the first buyer knows that the option to purchase the item outright is still available. If the first buyer places a bid, the fixed price option is no longer available, and therefore the indicator should be removed for future bidders.

**Re Claim 19:** Woolston further discloses generating a user interface to receive the buyer's indication to purchase the offering (Column 6, lines 31-38). Woolston notes that participants can respond to the auction by placing higher bids than currently listed. In order to do this the bidders at the consignment nodes disclosed by Woolston must have some interfaced medium through which they can place their bid and communicate the bid to the auction host and other bidders. This process could easily be applied to the fixed purchase price option, in that if that option were selected by the first buyer a similar interface would appear and the buyer could input appropriate information.

**Re Claim 27:** The machine readable medium of Claim 27 recites similar limitations to Claim 17 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 17.

**Re Claim 28:** The machine readable medium of Claim 28 recites similar limitations to Claim 18 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 18.

**Re Claim 29:** The machine readable medium of Claim 29 recites similar limitations to Claim 19 and is therefore rejected using the same art and rationale as applied in the rejection of Claim 19.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al (Hess hereinafter, US Patent No 6,058,417) in view of Hof.

**Re Claim 20:** Hess discloses a method for information presentation and management in an online trading environment, comprising; receiving offering information from a plurality of sellers at a computer based transaction facility (Column 1, lines 23-29); organizing the offering information into predetermined categories (Column 7, lines 20-24); receiving a category selection from a buyer at the computer based transaction facility (Column 2, lines 15-27); and automatically displaying a list of offering information in the selected category, with a visual indicator appearing in association with a respective offering (Fig 9A).

Hess does not explicitly disclose that the visual indicators appear in association with a seller having given affirmative indication to allow a buyer a chance to buy the first offering at a pre auction seller determined price.

Hof discloses that eBay, a popular internet auction server at the time of invention and the assignee of the Hess invention, had considered adding fixed prices to their

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auctions prior to applicants invention. It would have been obvious to someone skilled in the ordinary art at the time of invention to include the fixed price purchase process of Hof to the method of Hess, so that the risk for both the sellers and buyers in the auction process can be limited. The risk of a seller placing an item up for auction is that he or she will not receive a fair value for the product if only one bid is received. The risk of a buyer is that another bidder may drive up the price of said product above the fair value. The fixed price purchase option would help alleviate this risk by allowing the buyer and seller to agree on a reasonable price before the auction truly commences (introduction of additional bidders). The buyer and seller are therefore assured of a fair transaction, as opposed to the potential risks associated with the auction.

It also would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a specified price is the optimal system so that the buyer has the option to minimize his



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risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item.

Furthermore it would have been obvious to someone skilled in the ordinary art at the time of invention to include a visual indicator, similar to the ones in Hess, in association with the seller's offer to allow a buyer a chance to buy the first offering at a pre-auction seller determined price. In this way the buyer would have a quick indicator as to whether the fixed price option is still available and will not place a bid on the item should he prefer to buy it outright before the auction at the seller determined price.

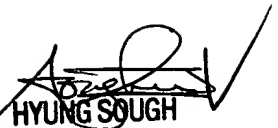
**Re Claim 21:** Hess in view of Hof discloses the claimed method except for removing the visual indicator after a first bid is accepted on the first offering from a first buyer. However this would be inherent if the first bidder is the only person eligible for the fixed price option, as established in the previous Claim 20. If a person places a bid on the item, the fixed purchase price is no longer available, and therefore any indication, visual or otherwise, would mislead other bidders into thinking the option is still valid.

**Re Claim 22:** Hess in view of Hof discloses the claimed method, and further, it would have been obvious to remove the offerings selling information if a seller and a buyer have agreed a fixed purchase price. The motivation behind the fixed purchase price is to provide the first bidder with the opportunity to buy the item before the initiation of the auction. If the first bidder selects this option, it would be misleading to other potential bidders if the selling information were not removed. Other users of the system would not want to waste time viewing an item that is not on the market, when they could continue their search for similar items elsewhere.

**Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Hof as applied to claim 23 above, and further in view of Hess et al. (Hess hereinafter, US Patent No 6,058,417).

Woolston in view of Hof discloses the claimed machine readable medium except for explicit disclosure wherein the machine readable medium is selected from a group comprising read only memory, random access memory, magnetic disk storage media, optical storage media, flash memory devices, or electrical, optical, acoustical or other form of propagated signal. Hess discloses a method for information presentation in an online trading environment where the machine readable medium provided as the invention includes floppy diskettes, optical disks, CD-ROMs, magneto optical disks, ROMs, RAMs ect. (Column 3, lines 48-57). It would have been obvious to someone skilled in the ordinary art at the time of invention to include the types of machine-readable mediums to the computer program product of Woolston in view of Hof so that a user of the system would have a proper means on which to store and access the programs necessary to participate in an online auction.

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